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INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference	FOR FURTHER ACTION		See Form PCT/PEA416
International application No. PCT/EP2004/006544	International filing date (day/month/year) 16.06.2004	Priority date (day/month/year) 17.07.2003	
International Patent Classification (IPC) or national classification and IPC B01J2/04, A23D7/00, A23D7/04			
Applicant UNILEVER N.V. et al.			
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 7 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> sent to the applicant and to the International Bureau) a total of sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>			
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input checked="" type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input checked="" type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>			
Date of submission of the demand 29.12.2004		Date of completion of this report 03.01.2006	
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465		Authorized Officer Popa, M Telephone No. +49 89 2399-	



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Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

Description, Pages

1-28 as originally filed

Claims, Numbers

1-21 as originally filed

Drawings, Sheets

1/10-10/10 as originally filed

- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

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Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application,
☒ claims Nos. 2 (part), 5 (part), 6 (part), 17-21

because:

- ☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (specify):
- ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
- ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
- ☒ no international search report has been established for the said claims Nos. 2 (part), 5 (part), 6 (part), 17-21
- ☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:
- | | |
|----------------------------|--|
| the written form | <input type="checkbox"/> has not been furnished |
| | <input type="checkbox"/> does not comply with the standard |
| the computer readable form | <input type="checkbox"/> has not been furnished |
| | <input type="checkbox"/> does not comply with the standard |
- ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions.
- ☐ See separate sheet for further details

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Box No. IV Lack of unity of invention

1. ☒ In response to the invitation to restrict or pay additional fees, the applicant has:
- ☐ restricted the claims.
 - ☐ paid additional fees.
 - ☐ paid additional fees under protest.
 - ☒ neither restricted nor paid additional fees.
2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose, according to Rule 68.1, not to invite the applicant to restrict or pay additional fees.
3. This Authority considers that the requirement of unity of invention in accordance with Rules 13.1, 13.2 and 13.3 is
- ☐ complied with.
 - ☒ not complied with for the following reasons:
see separate sheet
4. Consequently, this report has been established in respect of the following parts of the international application:
- ☐ all parts.
 - ☒ the parts relating to claims Nos. 1-16 .

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	2,3,8-16
	No: Claims	1,4-7
Inventive step (IS)	Yes: Claims	
	No: Claims	1-16
Industrial applicability (IA)	Yes: Claims	1-16
	No: Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

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Re Item III.

The presence in certain claims of parameters has rendered the search incomplete, as it is very difficult to compare the prior art to the content of the affected claims. Moreover, some employed parameters can be interpreted as a result to be achieved as no indication on how the desired feature could be obtained. Even more, the presence of the alpha-polymorph parameter in claim 2 can be regarded as a try to disguise a possible novelty problem as no reason for its presence can be found in the application as filed (no advantages brought by this feature are mentioned).

These parameters are:

- the solid structuring agent particles are at least 50% alpha-polymorph
- an average diameter (particle size) $D_{3,2}$ of ...

Re Item IV.

The application lacks unity within the meaning of Rule 13.1 PCT for the following reasons: the common concept linking together the independent claims 1 and 17 is the edible dispersion comprising oil and a solid phase. This common concept is not novel, see every document cited in the search report, for instance document US 2002/48606, [0038].

Hence the following separate inventions or groups of inventions are not so linked as to form a single general inventive concept:

1. Process for preparing an edible dispersion: claims 1-16
2. Use of micronized fat to stabilise a dispersion: claims 17-21

The special technical features of these 2 independent claims imply 2 different problems to be solved:

1. a process for obtaining an edible dispersion containing oil and a structuring fat
2. the use of a micronised fat for stabilising an emulsion

The application relates to a plurality of inventions, or groups of inventions, in the sense of Rule 13.1 PCT. They have been divided as defined above. If the applicant pays

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additional fees for one (or more) not yet searched group(s) of invention(s), then the further search(es) may reveal further prior art that gives evidence of a further lack of unity 'a posteriori' within one (or more) of the not yet searched group(s). In such a case only the first invention in this (each of these) group(s) of inventions, which is considered to lack unity of invention, will be the subject of a search. No further invitation to pay further additional fees will be issued. This is because Article 17(3)(a) PCT stipulates that the ISA shall establish the International Search Report on those parts of the international application which relate to the invention first mentioned in the claims ('main invention') and for those parts which relate to inventions in respect of which the additional fees were paid. Neither the PCT nor the PCT guidelines provide a legal basis for further invitations to pay further additional search fees (W17/00, point 11 and W1/97, points 11-16).

Re Item V.

1. The examination is being carried out on the following application documents:

- D1:** US 2002/048606 A1 (ZAWISTOWSKI JERZY) 25 April 2002
- D2:** US-B1-6 468 578 (MAYER KLAUS ET AL) 22 October 2002
- D3:** US-A-4 889 740 (PRICE JUDITH E) 26 December 1989
- D4:** US 2002/034577 A1 (VOGENSEN BENT KVIST ET AL) 21 March 2002
- D5:** TÜRK M ET AL: "Micronization of pharmaceutical substances by the Rapid Expansion of Supercritical Solutions (RESS): a promising method to improve bioavailability of poorly soluble pharmaceutical agents", JOURNAL OF SUPERCRITICAL FLUIDS, PRA PRESS, US, vol. 22, no. 1, January 2002, pages 75-84, XP004313515 ISSN: 0896-8446

2. **INDEPENDENT CLAIM 1**

2.1 The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 1 is not new in the sense of Article 33(2) PCT.

Document **D1** discloses (the references in parenthesis applying to this document)

an edible dispersion ([0038]) containing microparticles ([0031]) and an oil phase ([0038]). A matrix is also present ([0038]) in one preferred embodiment.

Therefore the subject-matter of claim 1 is not new.

3 DEPENDENT CLAIMS

Dependent claims do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty and/or inventive step (Article 33(2) and (3) PCT).

5. For the sake of completeness, it is to be said that several documents cited in the search report anticipates all the features of the independent claim, for instance **D1-D4**.

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